



New South Wales

# Health Practitioner Regulation Legislation Amendment Bill 2014

## Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

## Overview of Bill

The objects of this Bill are:

- (a) to amend the *Health Practitioner Regulation (Adoption of National Law) Act 2009* so as to modify the *Health Practitioner Regulation National Law (NSW)*:
  - (i) to require the Council for a health profession to notify a complainant who makes a complaint against a health practitioner or student of certain outcomes resulting from action taken by the Council in respect of the complaint, and
  - (ii) to enable the Civil and Administrative Tribunal to make prohibition orders against former registered health practitioners, and
  - (iii) to make it clear that a person whose registration as a health practitioner has been cancelled, or who has been disqualified from being so registered, by the Civil and Administrative Tribunal cannot apply for registration as a health practitioner unless the Tribunal makes a reinstatement order in respect of the person, and
  - (iv) to enable the Council for a health profession to order that a contravention of a condition on the registration of a health practitioner that it imposes or alters because of the impairment of the practitioner will result in the contravention being referred to the Health Care Complaints Commission to be dealt with as a complaint against the practitioner, and
  - (v) to require the Council for a health profession to notify the employer or accreditor of a registered health practitioner of the imposition of conditions (or the alteration or removal of conditions) on the practitioner's registration concerning the health, conduct or performance of the practitioner, and

- (vi) to make certain other amendments in the nature of statute law revision, and
- (b) to amend the *Health Services Act 1997* to permit public health organisations to share and exchange certain information about the appointments of health practitioners with licensees of private health facilities, and
- (c) to amend the *Private Health Facilities Act 2007* to permit licensees of private health facilities to share and exchange certain information about the appointments of health practitioners with other licensees of private health facilities and public health organisations.

## Outline of provisions

**Clause 1** sets out the name (also called the short title) of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act.

## **Schedule 1      Amendment of Health Practitioner Regulation (Adoption of National Law) Act 2009 No 86**

### **Notification of outcomes for complaints**

**Schedule 1 [1]** requires the Council for a health profession to notify a complainant who makes a complaint against a health practitioner or student of outcomes resulting from action taken by the Council under section 145B (Courses of action available to Council on complaint [NSW]) of the *Health Practitioner Regulation National Law (NSW)* in respect of the complaint.

### **Prohibition orders against former registered health practitioners**

**Schedule 1 [3]** enables the Civil and Administrative Tribunal to make a prohibition order against a former registered health practitioner under section 149C of the *Health Practitioner Regulation National Law (NSW)* if the Tribunal would have made an order suspending or cancelling the practitioner's registration if he or she had been registered. A **prohibition order** is an order that prohibits a person from providing specified health services or imposes conditions on the provision of specified health services by a person.

### **Registration of persons whose registration is cancelled or who have been disqualified from being registered**

**Schedule 1 [4]** makes it clear that a person whose registration as a health practitioner has been cancelled, or who has been disqualified from being so registered, by the Civil and Administrative Tribunal cannot apply for registration as a health practitioner unless the Tribunal makes a reinstatement order in respect of the person. The amendment seeks to remove uncertainty arising from observations made by the Court of Appeal in *Health Care Complaints Commission v Do* [2014] NSWCA 307 at [45]–[48]. **Schedule 1 [7]** provides for savings and transitional matters in connection with this amendment.

### **Critical impairment conditions**

**Schedule 1 [5]** enables the Council for a health profession to order that a contravention of a condition on the registration of a health practitioner that it imposes or alters because of the impairment of the practitioner will result in the contravention being referred to the Health Care Complaints Commission to be dealt with as a complaint against the practitioner. These kinds of conditions will be known as **critical impairment conditions**.

### **Notification of employers and accreditors of conditions imposed on registered health practitioners**

**Schedule 1 [6]** requires the Council for a health profession to notify the employer and accreditors of a registered health practitioner of the imposition of conditions (or the alteration or removal of conditions) on the practitioner's registration concerning the health, conduct or performance of the

practitioner. It also permits a Council to notify subsequent employers or accreditors of the practitioner.

If information is disclosed in a notice to an employer or accreditor about a registered health practitioner's impairment, the employer or accreditor will be under a duty to ensure that the nominated or agreed information recipient discloses or uses information about the impairment only for the purpose of:

- (a) the supervision or oversight of the practitioner during the course of the practitioner's work, or
- (b) ensuring the safety of patients at premises used by the practitioner during the course of the practitioner's work.

A failure to comply with this duty will be an offence.

### **Statute law revision amendments**

**Schedule 1 [2]** corrects an incorrect cross-reference.

**Schedule 1 [8]** ensures that, in calculating the maximum consecutive terms of office that a member of a Council for a health profession may serve, a period in office resulting from the operation of a certain transitional provision is not counted.

## **Schedule 2      Amendment of other Acts**

**Schedule 2.1** amends the *Health Services Act 1997* to enable a public health organisation to share or exchange appointment information about a health practitioner with a private health facility licensee if the public health organisation:

- (a) reasonably believes that the health practitioner practises at the private health facility, and
- (b) reasonably considers that the disclosure of that information to the licensee is necessary because it raises serious concerns about the safety of patients.

Information is ***appointment information*** about a health practitioner if:

- (a) the health practitioner practises (or formerly practised) at a hospital or other health institution of the public health organisation (whether under a service contract or otherwise), and
- (b) the information relates to the variation, suspension or termination by the public health organisation of clinical privileges of the health practitioner.

**Schedule 2.2** amends the *Private Health Facilities Act 2007* to enable a licensee of a private health facility to share or exchange appointment information about a health practitioner with another licensee or a public health organisation if the licensee:

- (a) reasonably believes that the health practitioner practises at the private health facility of the other licensee or at a hospital or health institution of the public health organisation, and
- (b) reasonably considers that the disclosure of that information to the other licensee or the public health organisation is necessary because it raises serious concerns about the safety of patients.

***Appointment information*** about a health practitioner is defined in a manner consistent with the comparable provision to be inserted in the *Health Services Act 1997* by the proposed Act.



New South Wales

# Health Practitioner Regulation Legislation Amendment Bill 2014

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New South Wales

# Health Practitioner Regulation Legislation Amendment Bill 2014

No. , 2014

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## **A Bill for**

An Act to make miscellaneous amendments to various Acts that relate to health practitioners.

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<b>The Legislature of New South Wales enacts:</b>	1
<b>1 Name of Act</b>	2
This Act is the <i>Health Practitioner Regulation Legislation Amendment Act 2014</i> .	3
<b>2 Commencement</b>	4
(1) This Act commences on a day or days to be appointed by proclamation, except as provided by subsection (2).	5 6
(2) Schedule 1 [4] and [7] commence on the date of assent to this Act.	7

<b>Schedule 1</b>	<b>Amendment of Health Practitioner Regulation (Adoption of National Law) Act 2009 No 86</b>	1
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<b>[1] Schedule 1 Modification of Health Practitioner Regulation National Law</b>		3
Insert after section 145B in Schedule 1 [15]:		4
<b>145BA Notification of outcomes of complaints to complainants [NSW]</b>		5
(1) This section applies to a Council for a health profession with respect to any of the following outcomes (a <i>notifiable outcome</i> ) concerning complaints against health practitioners or students—		6
(a) if the Council deals with a complaint by inquiry at a meeting of the Council under section 145B (1) (e)—the result of the inquiry;		7
(b) if the Council refers a health practitioner (or a matter concerning the practitioner’s health or professional performance) for assessment under section 145B (1) (f)—any action resulting from the assessment (including the imposition of conditions on the health practitioner’s registration);		8
(c) a decision of the Council to take action under section 145B (1) (g), (h), (i) or (j) in respect of a complaint.		9
(2) The Council must give the complainant notice in writing of a notifiable outcome within 30 days after the outcome.		10
(3) The Council may include such other information in the notice in addition to indicating the outcome as it considers appropriate.		11
(4) However, the Council must not disclose confidential information in a notice unless it considers that the public interest in disclosing the information outweighs the public interest in protecting the confidentiality of the information and the privacy of any person to whom it relates.		12
(5) For avoidance of doubt, section 145B (3) does not affect the obligation of a Council under this section to give notice of a notifiable outcome of the kind referred to in subsection (1) (b).		13
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<b>[2] Schedule 1 [15], section 146E (2)</b>		29
Omit “or a Committee by this Subdivision”. Insert instead “by Subdivision 6”.		30
<b>[3] Schedule 1 [15], section 149C (5A)</b>		31
Insert after section 149C (5):		32
(5A) The power of the Tribunal to make a prohibition order under subsection (5) extends to a person who is no longer registered if the Tribunal decides under subsection (4) that it would have suspended or cancelled the person’s registration if the person were still registered.		33
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<b>[4] Schedule 1 [15], section 149E</b>		37
Insert after section 149D:		38
<b>149E Effect of cancellation and disqualification decisions of Tribunal [NSW]</b>		39
(1) Despite any other provision of this Law, each of the following persons cannot make an application for registration as a health practitioner unless the Tribunal has made a reinstatement order under section 163B with respect to the person—		40
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	(a) a person whose registration as such a health practitioner has been cancelled by the Tribunal under this Law;	1 2
	(b) a person who has been disqualified from being registered as such a health practitioner by the Tribunal under this Law.	3 4
	(2) Subsection (1) and Division 8 continue to apply in respect of a disqualified person and the disqualification order even if the period of disqualification has expired or specified conditions for the cessation of the disqualification have been complied with.	5 6 7 8
<b>[5]</b>	<b>Schedule 1 [15], section 150FA</b>	9
	Insert after section 150F:	10
<b>150FA</b>	<b>Critical impairment conditions [NSW]</b>	11
	(1) This section applies if a Council imposes or alters a condition under this Law on the registration of a health practitioner because of the impairment of the practitioner.	12 13 14
	<b>Note.</b> In relation to the alteration of conditions—see, for example, section 152K.	15
	(2) The Council may order that a contravention of a condition on the registration of a health practitioner that it imposes or alters because of the impairment of the practitioner will result in the contravention being referred to the Commission to be dealt with as a complaint against the practitioner. Any such condition is then a <i>critical impairment condition</i> .	16 17 18 19 20
	(3) If a Council for a health profession is satisfied a health practitioner registered in the profession has contravened a critical impairment condition—	21 22
	(a) the Council must refer the matter to the Commission; and	23
	(b) the matter may be dealt with by the Commission as a complaint made to the Commission against the practitioner.	24 25
	(4) If the Commission decides to deal with the matter as a complaint, the Commission must investigate the complaint or cause it to be investigated and, as soon as practicable after the investigation is completed, consult with the Council about how the matter is to be dealt with, including, for example, by referring the complaint to the Tribunal or a Committee for the health profession in which the health practitioner is registered.	26 27 28 29 30 31
	<b>Note.</b> See section 145D which provides that both a Council and the Commission have a duty to refer a complaint to the Tribunal if, at any time, either of them is of the opinion the complaint, if substantiated, would provide grounds for the suspension or cancellation of the health practitioner's or student's registration.	32 33 34 35
	(5) This section has effect despite anything to the contrary in this Law.	36
<b>[6]</b>	<b>Schedule 1 [15], section 176BA</b>	37
	Insert after section 176B:	38
<b>176BA</b>	<b>Council to notify employers and accreditors about conditions concerning health, conduct or performance of health practitioners [NSW]</b>	39 40
	(1) This section applies if a Council makes any of the following decisions (a <i>condition decision</i> ) with respect to a registered health practitioner under this Law—	41 42 43
	(a) to impose conditions on the practitioner's registration concerning the health, conduct or performance of the practitioner;	44 45



- (b) to alter or remove conditions that the Council has imposed on the practitioner's registration concerning the health, conduct or performance of the practitioner. 1  
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- (2) The Council must, as soon as practicable after it makes a condition decision with respect to a registered health practitioner, give written notice of the decision to each employer or accreditor of the practitioner. 4  
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- (3) The Council may also, if it considers it appropriate, give written notice of a condition decision with respect to a registered health practitioner to an entity that becomes the practitioner's employer or accreditor after the decision is made. 7  
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- (4) The notice must include the details of the conditions that have been imposed or removed or the alterations that have been made to conditions that have been imposed. 11  
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- (5) If the notice given by the Council is about a condition that is imposed, altered or removed because of an impairment of the registered health practitioner, the practitioner's employer or accreditor must ensure that the nominated or agreed information recipient discloses or uses information about the impairment only for the purpose of— 14  
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- (a) the supervision or oversight of the practitioner during the course of the practitioner's work for the employer or accreditor; or 19  
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- (b) ensuring the safety of patients at premises used by the practitioner during the course of the practitioner's work for the employer or accreditor. 21  
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- Maximum penalty (subsection (5))— 24
- (a) in the case of an individual—20 penalty units; or 25
- (b) in the case of a body corporate—50 penalty units. 26
- (6) An employer or accreditor of a registered health practitioner may nominate another person to be the nominated information recipient for the purposes of subsection (5), but only if the person is— 27  
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- (a) involved in the supervision or oversight of registered health practitioners of the kind concerned during the course of their work; or 30  
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- (b) responsible for ensuring the safety of patients at premises used by registered health practitioners of the kind concerned during the course of their work. 32  
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- (7) If an employer or accreditor has not nominated a person to be the nominated information recipient for the purposes of subsection (5), the Council may, after consulting the employer or accreditor (and, if it considers it appropriate, the registered health practitioner concerned), provide information about the impairment to an agreed information recipient who is a person of a kind referred to in subsection (6) (a) or (b). 35  
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- (8) In this section— 41
- accreditor**, in relation to a registered health practitioner, means a licensee for a private health facility under the *Private Health Facilities Act 2007* that has accredited the health practitioner to provide services at the facility. 42  
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- employer**, in relation to a registered health practitioner, means an entity that has— 45  
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- (a) employed the health practitioner or other person under a contract of employment to provide services to or for the entity; or 47  
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(b)	appointed or engaged the health practitioner or other person under any other kind of contract or agreement to provide services to or for the entity.	1 2 3
[7]	<b>Schedule 1 [25], Schedule 5A</b>	4
	Insert at the end of the Schedule with appropriate Part and clause numbering:	5
<b>Part</b>	<b>Provision consequent on enactment of Health Practitioner Regulation Legislation Amendment Act 2014</b>	6 7 8
	<b>Application of amendment concerning requirement for reinstatement order before registration</b>	9 10
(1)	Without limiting section 287, section 149E, as inserted by the <i>Health Practitioner Regulation Legislation Amendment Act 2014</i> , extends to persons whose registrations as health practitioners were cancelled, or who were disqualified from being registered as health practitioners, by the Tribunal (or a predecessor of the Tribunal) before the commencement of section 149E.	11 12 13 14 15
	<b>Note.</b> Section 287 makes provision for cancellations of registration and disqualifications from registration made under corresponding prior Acts to continue to have effect under this Law as if they were decisions made by the responsible tribunal under this Law. As a result, subclause (1) includes such cancellations and disqualifications as well as cancellations and disqualifications under this Law. The subclause also extends to decisions made by the former health practitioner tribunals before their abolition and replacement by the Tribunal.	16 17 18 19 20 21 22
(2)	However, subclause (1) does not affect any application for registration that was made and granted before the commencement of section 149E.	23 24
[8]	<b>Schedule 1 [25], Schedule 5C</b>	25
	Insert “(excluding any period served because of the operation of clause 8 (2) (a) of Schedule 5A)” after “9 years” in clause 12 (2).	26 27

<b>Schedule 2</b>	<b>Amendment of other Acts</b>	1
<b>2.1</b>	<b>Health Services Act 1997 No 154</b>	2
	<b>Section 133C</b>	3
	Insert after section 133B:	4
<b>133C</b>	<b>Sharing or exchange of information about health practitioner appointments</b>	5
(1)	A public health organisation may share or exchange appointment information about a health practitioner with a private health facility licensee if the public health organisation:	6
	(a) reasonably believes that the health practitioner practises at the private health facility, and	7
	(b) reasonably considers that the disclosure of that information to the licensee is necessary because it raises serious concerns about the safety of patients.	8
(2)	Information is <i>appointment information</i> about a health practitioner for the purposes of this section if:	9
	(a) the health practitioner practises (or formerly practised) at a hospital or health institution of the public health organisation (whether under a service contract or otherwise), and	10
	(b) the information relates to the variation, suspension or termination by the public health organisation of clinical privileges of the health practitioner.	11
(3)	Without limiting section 133B, the disclosure of appointment information about a health practitioner by a public health organisation (or a person acting at the direction of the organisation) to a private health facility licensee does not, if the disclosure was made in good faith, subject the organisation or person personally to any action, liability, claim or demand.	12
(4)	Nothing in this section limits the ability of public health organisations to share or exchange appointment information about health practitioners with each other or with the Health Secretary or Minister.	13
(5)	In this section:	14
	<i>clinical privileges</i> has the same meaning as it has in Part 4 of Chapter 8.	15
	<i>health practitioner</i> has the same meaning as in the <i>Health Practitioner Regulation National Law (NSW)</i> .	16
	<i>private health facility licensee</i> means a licensee for a private health facility under the <i>Private Health Facilities Act 2007</i> .	17
<b>2.2</b>	<b>Private Health Facilities Act 2007 No 9</b>	18
	<b>Section 58A</b>	19
	Insert after section 58:	20
<b>58A</b>	<b>Sharing or exchange of information about health practitioner appointments</b>	21
(1)	A licensee may share or exchange appointment information about a health practitioner with another licensee or a public health organisation if the licensee:	22

- (a) reasonably believes that the health practitioner practises at the private health facility of the other licensee or at a hospital or health institution of the public health organisation, and 1  
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- (b) reasonably considers that the disclosure of that information to the other licensee or the public health organisation is necessary because it raises serious concerns about the safety of patients. 4  
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- (2) Information is **appointment information** about a health practitioner for the purposes of this section if: 7  
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- (a) the health practitioner practises (or formerly practised) at the private health facility of the licensee (whether under a contract or otherwise), and 9  
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- (b) the information relates to the variation, suspension or termination by the licensee of clinical privileges of the health practitioner. 12  
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- (3) The disclosure of appointment information about a health practitioner by a licensee (or a person acting at the direction of the licensee) to another licensee or a public health organisation does not, if the disclosure was made in good faith, subject the licensee or person personally to any action, liability, claim or demand. 14  
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- (4) In this section: 19
- clinical privileges** has the same meaning as it has in Part 4 of Chapter 8 of the *Health Services Act 1997*. 20  
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- health practitioner** has the same meaning as in the *Health Practitioner Regulation National Law (NSW)*. 22  
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- hospital, health institution** and **public health organisation** have the same meanings as they have in the *Health Services Act 1997*. 24  
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